

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

November 23, 1979

WILLIAM A. THIE
GENERAL COUNSEL
JOE C. CRAWFORD
GENERAL SOLICITOR

ARTHUR M. ALBIN
GENERAL ATTORNEY
MICHAEL E. ROOPER
COMMERCE COUNSEL

IN REPLY REFER TO: 410-043-43

11118
RECORDATION NO. Filed 1425

NOV 28 1979 - 12 15 PM

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

9-332A101
NOV 28 1979
Fee \$ 50.00

CC Washington, D. C.

Re: Agreement to Lease Railroad Equipment Dated as of
July 2, 1979, between U.S. Steel Credit Corporation,
Lessor, and Missouri-Kansas-Texas Railroad Company,
Lessee, covering 100 100-ton Jumbo Covered hopper
cars bearing numbers and marks MKT 4200 to MKT 4299.

Dear Mrs. Mergenovich:

In accordance with the provisions of Section 11303 of the Interstate Commerce Act and the rules and regulations approved and prescribed by the Interstate Commerce Commission pursuant thereto, there is submitted herewith for filing and recording three executed copies of Agreement to Lease Railroad Equipment dated as of July 2, 1979, by and between U.S. Steel Credit Corporation, Lessor, 600 Grant Street, Pittsburgh, Pennsylvania 15230, and Missouri-Kansas-Texas Railroad Company, 701 Commerce Street, Dallas, Texas 75202, which Agreement to Lease Railroad Equipment covers 100 100-ton Jumbo Covered hopper cars bearing reporting numbers and marks MKT 4200 to MKT 4299, both inclusive.

Also enclosed is a cashier's check in the amount of \$50.00 payable to the Interstate Commerce Commission to cover the prescribed fee for filing and recording this Agreement to Lease Railroad Equipment.

Please return the two executed copies to Mr. John Hammerschmidt, General Attorney, Law Department, U.S. Steel Corporation, 600 Grant Street, Pittsburgh, Pennsylvania 15230.

Nov 27 12 03 PM '79
FEE C. 10.00
10.00

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W. A. Thie

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
LAW DEPARTMENT

Mrs. Agatha L. Mergenovich
November 9, 1979
Page 2

I certify that I have knowledge of the matters set forth herein.

Very truly yours,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

A handwritten signature in cursive script, appearing to read "Arthur M. Albin".

Arthur M. Albin

AMA:ds

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

11/28/79

OFFICE OF THE SECRETARY

Arthur M. Albin, Gen. Atty.
Missouri-Kansas-Texas RR. Co.
701 Commerce Street
Dallas, Texas 75202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/28/79 at 12:55pm, and assigned re-recording number(s). 11118

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

Attest:

U. S. STEEL CREDIT CORPORATION

Secretary

(Corporate Seal)

Attest:

By _____
Vice President

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

(Corporate Seal)

By _____
Vice President

STATE OF IDAHO
COUNTY OF ADA

} SS.
}

On this 14th day of November, 1979, before me personally appeared
Robert H. Schwarz to me personally known, who being by me
duly sworn says that such person is President of MINNESOTA,
DAKOTA & WESTERN RAILWAY COMPANY, that the foregoing Lease Agreement and
Equipment Schedule A, were signed on behalf of said corporation by authority of its
board of directors, and such person acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.


Notary Public

Expiration Date: 6/13/82

11118
RECORDATION NO. Filed 1425

NOV 28 1979 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT TO LEASE RAILROAD EQUIPMENT

DATED AS OF July 2, 1979

Between

U. S. STEEL CREDIT CORPORATION
Lessor,

and

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
Lessee.

This AGREEMENT TO LEASE RAILROAD EQUIPMENT (hereinafter the "Agreement") is dated as of July 2, 1979 and made between U. S. Steel Credit Corporation, a Delaware corporation (hereinafter "Lessor"), and Missouri-Kansas-Texas Railroad Company, a Delaware corporation, (hereinafter "Lessee"); WITNESSETH:

WHEREAS, Lessee desires to lease from Lessor commencing no later than December 31, 1979, one hundred (100) Pullman Standard PS-2-CD 100-ton Jumbo Covered hopper cars at the rentals and for the terms and upon the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby undertakes to lease the Cars to Lessee, and Lessee hereby agrees to lease the Cars from Lessor, upon the following terms and conditions:

1. Acquisition, Delivery and Acceptance of the Cars.

(a) Lessee has heretofore ordered certain railroad equipment described in Exhibit A hereto (collectively "Cars" and each a "Car") pursuant to Lessee's purchase order number D-24432 dated July 31, 1978 (as the same has heretofore been or may hereafter be amended, modified or supplemented, the "Purchase Order"), a true, correct and complete copy of which has been furnished to Lessor, and Lessee has delivered, or shall forthwith deliver to Lessor, an assignment of its rights under such

Purchase Order together with the consent of Pullman Standard (the "Seller") with respect thereto (each of which shall be in form and substance satisfactory to Lessor).

(b) Lessor shall acquire the Cars for a purchase price as shown in Exhibit A ("Acquisition Cost") not to exceed the amount specified in Exhibit A as "Maximum Acquisition Cost". Lessor shall have no obligations under the Purchase Order other than to pay the purchase price for the Cars covered thereby in accordance with the provisions of this Agreement; Lessee shall be responsible for the performance of all other obligations (other than those of the Seller) under the Purchase Order. Lessor shall have no responsibility or liability to Lessee or any other person for the adequacy or accuracy of any specifications set forth in the Purchase Order or for the failure on the part of the Seller to accept the Purchase Order or to make delivery of any Car covered thereby in accordance with the terms thereof.

(c) Lessee shall accept delivery of the Cars and shall forthwith execute and deliver to the Seller and Lessor one or more Certificates of Acceptance, substantially in the form of Exhibit B hereto, relating to such Cars.

(d) The delivery of any Car to Lessee and the delivery to Lessor of a Certificate of Acceptance shall constitute Lessee's acknowledgment that: (i) Lessee has fully inspected such Cars; (ii) such Cars are in good condition and repair, are of the manufacture, design and specifications selected by Lessee and are suitable for Lessee's purposes; (iii) such Cars are in full compliance with this Agreement and Interstate Commerce Commission and all other applicable governmental agency requirements and

specifications, if any, and Lessee has accepted such Cars hereunder; and (iv) Lessor has made no representation or warranty of any kind with respect to such Cars. Lessee shall pay all costs and expenses of freight, packing, insurance, handling, storage, shipment and delivery of the Cars to the extent that the same have not been included in Acquisition Cost.

(e) Lessor agrees to remit the Acquisition Cost to Seller upon receipt of Certificates of Acceptance covering all Cars and Seller's invoice in such amount (approved in writing by Lessee). In the event that (i) by December 31, 1979 Lessee shall have failed for any reason to accept delivery of any Car delivered to Lessee by Seller prior to such date or shall have failed for any reason to deliver to Seller and Lessor a Certificate of Acceptance relating to any Car delivered to Lessee by Seller prior to such date or (ii) any Car has not been delivered by Seller to Lessee as contemplated herein by December 31, 1979, then any such Car shall be excluded from this Lease and Lessor shall remit to Seller an equal amount to Seller's invoice price per Car times the number of Cars for which Lessee has executed Certificates of Acceptance on or prior to December 31, 1979 upon receipt from Seller of an invoice in such amount (approved in writing by Lessee) not to exceed the Maximum Acquisition Cost.

2. Title. At all times while this Agreement is in force no title or other right of ownership in the Cars shall be vested in Lessee, and delivery of possession of the Cars to Lessee and Lessee's possession of the Cars is solely in accordance with the terms of this Agreement.

3. Rentals. Commencing on the date on which Lessor makes its payment for the acquisition of any Cars and until the commencement of the Initial Term (as defined in Section 4 hereof), Lessee will pay Lessor, as interim rent for such Cars, a per diem amount equal to 1/90 of the Rental Factor multiplied by the total cost to Lessor to acquire such Cars. The interim rent shall be paid upon commencement of the Initial Term.

During the Initial Term Lessee will pay Lessor, as rental for the Cars, quarterly in arrears, 72 consecutive quarterly payments, each in an amount equal to 2.9737% (the "Rental Factor") of the Acquisition Cost. The initial rental payment date shall be on the ninety-first day following the date on which Lessor makes its final payment for the acquisition of the Cars (hereinafter the "Final Settlement Date"), which shall not be later than December 31, 1979. Subsequent quarterly rental payments shall be due on the same day of the month as the first day of the Initial Term, of every third month thereafter during the Initial Term and any extensions or renewals thereof (hereinafter the "Rental Payment Date").

All payments to Lessor provided for in this Agreement shall be made to Lessor at P. O. Box 7591, Church Street Station, New York, New York 10249, or at such other places as Lessor from time to time shall specify in writing.

The lease embodied in this Agreement is a net lease and Lessee shall not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever, including but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor or any

assignee of Lessor under this Agreement or otherwise, nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Cars or damage to or loss or destruction of all or any of the Cars from whatever cause, the taking or requisition of the Cars by condemnation or otherwise, the prohibition of Lessee's use of the Cars, the interference with such use by any government, person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, or lack of right, power or authority of Lessor or Lessee to enter into this Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement.

In case of failure of Lessee to procure or maintain insurance or to pay fees, assessments, charges, taxes and expenses, including but not limited to expenses to maintain the Cars in accordance with Section 10 hereof, all as herein required, Lessor shall have the right, but shall not be obligated, to effect such insurance or pay said fees, assessments, charges, taxes and expenses. In that event the cost thereof shall be a cost of the Lessee and shall be payable to Lessor on demand.

If any amounts payable pursuant to the terms of this Agreement, including but not limited to rentals due hereunder, remain unpaid after the same shall become due and payable, Lessee shall pay interest on such

overdue amounts for the period of time during which they are overdue at the rate of 13% per annum (hereinafter the "Penalty Interest Rate"), it being expressly understood that this provision shall be in addition to any other rights which Lessor may have under this Agreement in the event Lessee fails to make payments required hereunder when the same shall have become due and payable.

4. Term of Lease; Renewal Terms; Rentals for Renewal Term.

This Lease shall take effect as of the date herein written. The Initial Term of this Lease (hereinafter the "Initial Term") shall begin on the Final Settlement Date, and, subject to the provisions of this section and sections 13 and 28 hereof, shall terminate at the expiration of eighteen (18) years from the commencement of the Initial Term. Each Car shall be subject to the terms of this Lease on the date of the Certificate of Acceptance with respect to such Car.

At the end of the Initial Term Lessee may lease all but not less than all of the Cars that have not previously suffered a Casualty Occurrence for an additional term of three years (the "First Renewal Term") for their then fair market rental value payable quarterly in advance, or return the Cars to Lessor. At the end of the First Renewal Term, Lessee may lease all but not less than all of the Cars that have not previously suffered a Casualty Occurrence for an additional term of three years (the "Second Renewal Term") for their then fair market rental value payable quarterly in advance, or return the Cars to Lessor.

Notwithstanding anything to the contrary contained in this section 4, Lessee may exercise its options to renew the lease described in this section 4 only if (i) at the time of such exercise Lessee is not in default

hereunder; (ii) Lessee shall have given Lessor 180 days' prior written notice of its election to exercise such option; and (iii) the written notice specifies the Cars to be leased in the renewal term.

When and as necessary, the fair market rental value shall be an amount mutually agreed upon by Lessor and Lessee. Lessee shall estimate and tender to Lessor the first quarterly payment of the fair market rental value, with the 180-day notice set forth above. In the event Lessor rejects Lessee's estimate and the parties cannot otherwise agree within 60 days after mailing of Lessee's notice to exercise its option hereunder, then the fair market rental value shall be determined by an appraiser selected by mutual agreement. If the parties are unable to agree upon an appraiser, or if the fair market rental value is not determined within 90 days after mailing of Lessee's notice to exercise its option hereunder, Lessor and Lessee shall each select an appraiser within 5 days thereafter and the two appraisers so selected shall select a third appraiser within 10 days after the selection of the two appraisers. The three appraisers shall determine, by the agreement of any two appraisers, the fair market rental value within 30 days after appointment of the third appraiser. If the three appraisers fail to make such determination within said 30-day period, the fair market rental value shall be the average of the two appraisals that are closest to each other, or the average of the two higher appraisals if the middle appraisal is equidistant from the other two appraisals. All costs of appraisal shall be borne by Lessee.

5. Identification Marks. Lessee will cause each Car to be numbered with its road numbers and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Car,

in letters not less than one inch in height, "U. S. Steel Credit Corporation, Pittsburgh, PA., Owner and Lessor," or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be requested by Lessor or required by law in order to protect Lessor's title to the Cars and its rights under this Agreement. Lessee will not place any Car in operation until such words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not change the road number of any Car except in accordance with a statement of new numbers to be substituted therefor, which statement or reference thereto previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on the Cars as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Cars to be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates on railroad equipment used by it of the same or a simliar type for convenience of identification of the right of Lessee to use the Cars under this Agreement.

6. Taxes. In addition to the rent provided herein, and as a separate item, Lessee shall pay or reimburse Lessor for all taxes (exclusive of taxes based on Lessor's net income or franchise taxes, unless such net income or franchise taxes are in substitution for or relieve Lessee from any taxes which Lessee would otherwise be obligated to pay

under the terms of this section), fees, charges, licenses, and assessments, whatsoever, however designated, whether based on the rent or levied, assessed or imposed upon the equipment or upon or in respect of the manufacture, purchase, delivery, ownership, leasing, use or return of the Cars, now or hereafter levied, assessed or imposed during the term of this lease under the authority of a federal, state or local taxing jurisdiction, regardless of when and by whom payable. Applicable sales and use taxes will be added to the rent unless Lessee provides evidence of direct payment authority, a valid exemption certificate, or an opinion of counsel satisfactory to Lessor that such taxes are not due from or payable by Lessor.

7. Payment for Casualty Occurrence or for Cars Unserviceable for Use. In the event any Car delivered hereunder to Lessee shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or, in the opinion of Lessor and Lessee, obsolete or economically unserviceable for use from any cause whatsoever, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence being hereinafter called a "Casualty Occurrence") during the continuance of this Agreement, Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform Lessor in regard thereto by written notice. On the next Rental Payment Date hereunder following the receipt of notice by Lessee of a Casualty Occurrence, Lessee will pay Lessor on account of the affected Cars the stipulated loss value thereof (hereinafter the "Stipulated Loss Value"), calculated as of such next Rental Payment Date in accordance with the Schedule of Stipulated Loss Values which is attached hereto, made a part hereof and marked Exhibit "C". Upon paying the Stipulated Loss Value of the Car or Cars which shall have suffered a Casualty Occurrence, rental for such Car or Cars shall cease

to accrue after that Rental Payment Date, the total cost of such Car or Cars as shown in Exhibit A hereto being subtracted from the Acquisition Cost for the determination of future rental payments pursuant to Section 3 hereto, and Lessee shall thereupon automatically take title to such Car or Cars as-is, where-is, without warranty by Lessor express or implied with respect to any matter whatsoever. Lessee will dispose of such Car or Cars that have suffered a Casualty Occurrence as soon as economically reasonable and will report to Lessor as to any amounts realized in such disposition, and Lessee shall pay to Lessor such amounts realized plus any insurance or other proceeds received by Lessee by reason of such Casualty Occurrence to the extent that they exceed the Stipulated Loss Value. Provided, however, if there is an AAR settlement for any Car or Cars suffering a Casualty Occurrence off line, the parties agree that the Lessee shall be entitled to any amount received in excess of the fair market value of the Car or Cars immediately prior to such Casualty Occurrence. Provided further, that in no case shall the fair market value of such Car or Cars be less than the Stipulated Loss Value for such Car or Cars. Subject to the prior sentence, the fair market value of the Car or Cars shall be the amount mutually agreed to between the Lessor and Lessee and in the event that they cannot agree to such fair market value, the fair market value shall be determined by an appraiser selected by mutual agreement. If the parties are unable to agree upon an appraiser within 15 days after a notice by one party to the other for the selection of an appraiser, then Lessor and Lessee shall each select an appraiser within 10 days thereafter, and the two appraisers so selected shall select a third appraiser within 20 days after the selection of the two appraisers. The three appraisers shall

determine between agreement of any two appraisers the fair market value within 30 days after the appointment of the third appraiser. If the three appraisers fail to make such determination within said 30-day period, the fair market value shall be the average of the two appraisers that are closest to each other or the average of the two higher appraisers if the middle appraisal is equidistant from the other two appraisals. All costs of appraisal shall be borne by Lessee.

Lessee shall bear the risk of, and, except as herein provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Car after Lessee's acceptance thereof.

8. Disclaimer of Warranties.

(a) LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO CONDITION, QUALITY, DURABILITY, SUITABILITY, ADEQUACY, MERCHANTABILITY, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, DESIGN, OPERATION, USE OR PERFORMANCE OF ANY CAR OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY CAR, except that Lessor represents that it has such title and ownership in the Cars as has been conveyed to Lessor by Seller in bills of sale relating to the Cars.

(b) Nothing contained in this section shall be deemed to limit Lessee from availing itself of any representations, warranties or

agreements of the Seller. Lessee acknowledges and agrees that, except as otherwise specifically provided herein, Lessor shall have no responsibility or liability to Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Car or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Car or any risks relating thereto; (iii) any interruption of service, loss of business or anticipatory profits or consequential damages; or (iv) the delivery, installation, erection, testing, programming, adjusting, operation, servicing, maintenance, repair, improvement or replacement of any Car. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Cars against any manufacturers, contractors or sellers in respect thereof.

9. Rules, Laws and Regulations. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules foreign or domestic (including the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules, or supplements thereto of the Mechanical Division, Association of American Railroads) with respect to the use, maintenance and operation of each Car subject to

this Lease. In case any equipment or appliance on any such Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense. Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all reports (other than income tax returns) to be filed by Lessor with any federal, state or other regulatory authority by reason of Lessor's ownership of the Cars or the leasing thereof to Lessee.

10. Use and Maintenance of Cars. The Lessee shall use the Cars only in the manner for which they were designed and intended and so as to subject them only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Cars in good order, condition and repair, and suitable for use in interchange. The Lessee shall not materially modify any Car without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor. Lessee shall not knowingly allow the Cars to be used continuously in unit train service for more than one year.

11. Indemnification. Lessee agrees to indemnify, defend and hold harmless Lessor and its successors and assigns from and against (a) any and all loss or damage of or to the Cars, usual wear and tear excepted, and (b) any and all losses, expenses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, patent liabilities, penalties and interest, arising in any way out of or as the result of the entering into or the performance of this Agreement, the ownership of any Car, the transportation, leasing, use, operation, condition, purchase, rehabilitating, delivery, rejection, or storage of any Car or any accident in connection with the transportation, leasing, operation, use, condition, possession, or storage of any Car resulting in damage to property or injury or death to any person, or arising by reason or as a result of any act or omission of the Lessor or of the Lessee for itself or as agent or attorney-in-fact for Lessor hereunder; including any and all claims based upon the alleged negligence of Lessor. The indemnities arising hereunder shall continue in full force and effect notwithstanding the full payment of all other obligations under the lease

embodied in this Agreement or the termination of that lease. Notwithstanding the foregoing, it is agreed that Lessee shall not be liable for any losses, expenses, damages, injuries, liabilities, claims and demands accruing or arising following the termination of the lease and the relinquishing of possession of the Cars following any period of storage relating to termination unless such losses, expenses, damages, injuries, liabilities, claims and demands arise as a result of Lessee's performance of this Agreement, or arise as the result of the transportation, leasing, use, operation, maintenance, condition, possession, or storage of any Car pursuant to the terms of this lease agreement.

12. Insurance. Lessee will, at all times while the lease included in this Agreement is in effect, at its own expense, cause to be carried and maintained, in respect of the Cars at the time subject hereto, public liability and casualty insurance in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by Lessee on equipment owned by it, provided that the casualty insurance shall not be less than the aggregate Stipulated Loss Value and the public liability insurance shall be in amounts not less than \$25,000,000. Such insurance shall be in form and amount and with Lloyds of London and/or insurers reasonably acceptable to Lessor and shall include Lessee and Lessor as named insureds as their interests may appear, and may have a \$1,000,000 per accident deductible for liability insurance and \$1,000,000 per accident deductible for casualty insurance. Lessee shall deliver said policies, or duplicates thereof, to Lessor upon Lessor's written request

therefor. Each insurer shall acknowledge and agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor that it will make payment of any claims in respect of the Cars jointly to Lessee and Lessor for application in accordance with the terms of this Agreement and give Lessor at least thirty (30) days written notice before the policy in question shall be altered or cancelled. The proceeds of such insurance, at the option of Lessor, shall be applied toward (a) the replacement, restoration or repair of the Cars, (b) payment of the Stipulated Loss Value thereof or (c) payment or as provision for satisfaction of any other obligations of Lessee hereunder.

13. Default. If, during the continuance of the lease embodied in this Agreement, one or more of the following events (herein sometimes called "Events of Default") shall occur:

A. failure to pay when due any part of the rental provided in sections 3 and 4 hereof, which failure shall continue for ten (10) days after the due date thereof;

B. nonpayment of any other amount provided for in this Agreement when the same becomes due, or default by Lessee in performing any obligation, term or condition of this Agreement, provided such nonpayment or default shall continue for more than thirty (30) days after written notice;

C. the Lessee shall make or permit any unauthorized assignment or transfer of this Agreement or of possession of the Cars, or any thereof;

D. Lessee commences, makes, consents to or acquiesces in any assignment for the benefit of creditors, or the appointment of any liquidator or receiver or any proceeding under any bankruptcy, reorganization, insolvency, dissolution or similar law, or if, in any proceeding relating to any of the above commenced or brought against Lessee in such proceeding or adjudicating Lessee bankrupt or insolvent and such order remains in effect for more than 30 days, whether or not consecutive;

E. any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Lessee or any other party liable for payment or performance of this Agreement proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or has omitted any substantial contingent or unliquidated liability or claim against Lessee or any such other party;

then, in each and every such case, Lessor, at its option may

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce Lessee's performance of the applicable covenants of this Agreement or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee, terminate this Agreement and the lease embodied herein forthwith as to any or all Cars, whereupon all right

of Lessee to the use and possession of such Car or Cars shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall remain liable as hereinafter provided, and thereupon Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and without any court order or other process of law take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Cars for any purposes whatever, Lessee hereby waiving any and all damages occasioned by such taking of possession, but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Agreement may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee the following amounts as a part of Lessor's damages:

(i) the Stipulated Loss Value of the Cars as of the date of default, as that value is set forth in the Schedule of Stipulated Loss Values, Exhibit "C" hereto, subject to credit or reimbursement by Lessor to Lessee for any rentals Lessor may earn on the Cars from the date of default to the end of the Initial Term, net of Lessor's expenses incurred in connection with such re-leasing, the amount of such credit or reimbursement to be limited to the Stipulated Loss Value paid by Lessee pursuant to this section, such net rentals or credit to be paid to or credited to Lessee's account

within a reasonable time after their receipt by Lessor, or, alternatively, subject to such credit or reimbursement for the net proceeds of any sale of the Cars by Lessor (the parties hereto expressly agreeing that such sale shall be deemed to have been made in a commercially reasonable manner) concluded prior to the end of the Initial Term, net of Lessor's expenses incurred in connection with such sale, the amount of such credit or reimbursement to be limited to the amount of the Stipulated Loss Value paid by Lessee pursuant to this section; and

- (ii) a reasonable provision for expenses incidental to the Lessor's enforcement of its rights hereunder including, but not limited to, expenses of taking possession of the Cars if the Cars have not been delivered to Lessor by Lessee as provided under section 14 hereof; and
- (iii) any damage which the Lessor shall have sustained by reason of the breach of any covenants of this Agreement; and
- (iv) interest on any of the above amounts at the Penalty Interest Rate from the date of default until the date of payment; and
- (v) reasonable attorneys' fees and costs of suit incurred in connection with the enforcement of the provisions of this Agreement.

The election by Lessor to relet the Cars and the acceptance of a new Lessee shall be in Lessor's sole discretion and shall not operate to release Lessee from any existing or future default in any other covenant or promise herein contained. The obligation of Lessee to pay any deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessor's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies of this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity and may be enforced concurrently therewith or from time to time. Lessor's failure to enforce any provision hereof or its failure to avail itself of any remedy afforded hereunder shall not be deemed a waiver thereof. Lessee hereby waives any provision of any law now or hereafter in effect which might limit or modify any of the remedies of Lessor provided hereunder or exempt any property of Lessee, except insofar as such waiver would conflict with the Bankruptcy Act.

14. Return of Cars Upon Termination. Upon termination of the lease embodied in this Agreement for any reason, Lessee shall forthwith deliver possession of the Cars to Lessor in their original condition, reasonable wear and tear excepted but in any event suitable for use in interchange. For the purpose of delivery of possession of the Cars to Lessor as above required, Lessee shall at its own cost, expense and risk:

(a) forthwith place the Cars upon such storage tracks of Lessee as Lessor may reasonably designate;

(b) permit Lessor to store the Cars on such tracks at Lessee's risk for a period not to exceed six (6) months; and

(c) transport (one time for each Car) the same to any place on the lines of the Lessee as then constituted, as Lessor may request.

The assembling, delivery, storage and transporting of the Cars as herein provided shall be at Lessee's expense and risk and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction

in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Cars. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any Car, to inspect the same, subject to reasonable supervision by Lessee.

Without in any way limiting Lessee's obligation hereunder, Lessee hereby irrevocably appoints Lessor as Lessee's agent and attorney, with full power and authority, at any time while Lessee is obligated to deliver possession of any Car to Lessor, to demand and take possession of such Car, in the name and on behalf of Lessee, from whoever shall be in possession of such Car at the time.

15. Assignment; Possession and Use. This Agreement may be assigned in whole or in part by Lessor without Lessee's consent, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. In the event of Lessor's assignment, Lessor's transferee or assignee shall have, to the extent transferred or assigned to it, all rights, powers, privileges and remedies of Lessor hereunder. Lessee agrees that no such transferee or assignee shall assume any obligation (except the obligation of quiet enjoyment free from hindrance from those claiming by or under such transferee or assignee) of Lessor hereunder, and that the obligations of Lessee hereunder shall not be subject, as against any such transferee or assignee, to any defense, set-off or counterclaim available to Lessee against Lessor and that the same may be asserted only against Lessor. It is understood and agreed, however, that Lessee may separately claim against Lessor as to any matters which Lessee may be entitled to assert

against Lessor. All the rights of Lessor hereunder (including, but not limited to, the rights to receive the rentals payable under this Agreement) shall inure to the benefit of Lessor's assigns. Whenever the term Lessor is used in this Agreement it shall apply and refer to each such assignee of Lessor.

So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Agreement. Lessee shall not assign or transfer its leasehold interest under this Agreement.

Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created or incurred by Lessor which is not the result of any act or omission of Lessee) upon or with respect to any Car, including any accession thereto, or the interest of Lessor, or Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. Lessee shall not, without Lessor's prior written consent, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except as permitted herein.

So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession of the Cars and to the use of the Cars upon lines of railroad owned or operated by it or upon lines of railroad over which Lessee has trackage or other operating rights or over which Lessee's railroad equipment is regularly operated pursuant to contract, and also to permit the use of the Cars upon connecting and other carriers in the

usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement, provided, however, that Lessee shall not assign or permit the assignment of any Car to service involving the regular operation and maintenance thereof outside the United States of America or any operation and maintenance thereof at any time outside the United States of America. Lessee may receive and retain compensation for such use from other railroads so using any of the Cars.

16. Notices. Any notice required or permitted to be given by or to either party hereto shall be deemed to have been given when deposited in the United States mails, in certified or registered form, postage prepaid.

17. Law Governing. This Agreement shall be construed in accordance with the laws of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by the Interstate Commerce Act 49 U.S.C. §11303 and such additional rights arising out of the filing, recording, or depositing hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement shall be filed, recorded or deposited.

18. Modification of Agreement. Except as specifically provided for under the terms of this Agreement, no modification, extension, waiver, renewal or termination of this Agreement, or any of its provisions, shall be binding on either party hereto unless made in writing on its behalf by the duly authorized representative of said party.

19. Annual Reports. On or before May 15 in each year, commencing with the year 1979, Lessee will furnish to Lessor an accurate statement as of the preceding December 31 (a) of Lessee's financial position

including a balance sheet and statement of profit and loss and such other information as Lessor shall reasonably request, prepared and certified or reviewed by independent certified public accountants, (b) showing the amount, description and numbers of the Cars then leased hereunder, the amount, description and numbers of all Cars that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition and state of repair of the Cars as Lessor may reasonably request, and (c) stating that, in the case of all Cars repainted during the period covered by such statement, the markings required by section 5 hereof. shall have been preserved or replaced.

Lessor shall have the right, by its authorized representatives but shall be under no obligation, to inspect the Cars and Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to Lessor the existence and proper maintenance thereof during the continuance of the lease embodied in this Agreement. Lessee's obligations respecting the Cars shall not be diminished in any manner by any failure of Lessor to so inspect.

20. Opinion of Counsel. At the time this Agreement is executed, (except as to provision C, which opinion will be delivered to Lessor within 20 days of the execution of this Agreement, but in any event prior to Lessor's obligation to acquire the Cars set forth in this Agreement) Lessee will deliver to Lessor two counterparts of the written opinion of counsel for Lessee, addressed to Lessor, in scope and substance satisfactory to counsel for Lessor, to the effect that:

A. Lessee is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, with

full power to enter into and perform its obligations under this Agreement and the Purchase Order Assignment.

B. The execution and delivery of this Agreement and the Purchase Order Assignment have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding obligations of Lessee, enforceable in accordance with their respective terms.

C. This Agreement has been duly filed and recorded with the Interstate Commerce Commission pursuant to the Interstate Commerce Act 49 U.S.C. §11303 and such filings and recordation will protect Lessor's interest in and to the Cars and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interest of Lessor in and to the Cars:

D. No consent or approval of, giving notice to, registration with, or taking of any other action is required from any public regulatory body with respect to the execution, delivery and performance by the Lessee of this Agreement or Purchase Order Assignment.

E. The entering into and performance of this Agreement do not conflict with, result in violation of or will not result in any breach of, or constitute a default under, any provision of the certificate of incorporation or bylaws of Lessee, any lease, indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or other instrument to which Lessee is a party or by which it or any of its properties may be bound or any law, governmental regulation, or court decree or other order applicable to Lessee;

F. No existing mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter

cover or affect, any property or interests therein of Lessee, now attaches or hereafter will at any time attach to the Cars or in any manner now affects adversely, or hereafter will at any time affect adversely, Lessor's right, title and interest therein, so long as the Cars remain subject to this Agreement; and

G. The Cars, which are then subject to this Agreement, are held by Lessee under and subject to the provisions of this Agreement prior to any lien, charge, or encumbrance in favor of anyone claiming by, through or under Lessee.

21. Recording; Expenses. Lessee will cause, at its expense, this Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303. Lessee will undertake the filing, registering, deposit and recording required of Lessor hereunder and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will file, reregister, deposit and re-deposit and re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interests in the Cars, or for the purpose of carrying out the intention of this Agreement; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

22. Federal Income Taxes.

(a) If, for each year this lease is in effect, beginning in 1979, Lessor shall not be entitled to such depreciation deductions, as are provided for Federal income tax purposes by the Internal Revenue Code of 1954 as amended to the date hereof or as the same may hereafter be amended from time to time (the "Code") to an owner of new property, including without limitation an allowance for depreciation based on the maximum deduction possible using Lessor's cost as shown in the schedule, any accelerated method permitted by the Code and the Income Tax regulations promulgated thereunder for the type of equipment and use thereof contemplated by this lease, and an Asset Depreciation Range with a lower limit of not more than 12 years; or if any such deductions are lost, disallowed or recaptured, in whole or in part, or if the rate, manner or basis of taking any such depreciation deductions shall be changed or affected in whole or in part; but in each case only by reason of any of the following events:

(1) an item of equipment was used and not new on the date it was acquired by Lessor, and therefore "the original use" of the equipment did not commence with the Lessor pursuant to Section 167(c) of the Code and the Income Tax Regulations promulgated thereunder;

(2) an item of equipment was not placed in a condition or state of readiness and availability for functioning so as to be deemed to be "first placed in service" by Lessor within the year 1979 pursuant to Section 1.167(a)11 of the Income Tax Regulations;

(3) any action which Lessee takes or fails to take in respect of its income tax returns or otherwise;

(4) any use, operation, improvement, alteration or location of any item of equipment by Lessee or any other party having possession or control of such item of equipment;

(5) the removal from service of or substitution for any item of equipment, or the replacement of any part or portion thereof, whether or not such removal, substitution or replacement is authorized or contemplated under the terms of this Lease, or by subsequent agreement among the parties hereof;

(6) any change or amendment in the Code or any change in any rule or regulation promulgated by the Internal Revenue Service under the Code, prior to the acceptance of the Cars; or

(7) Lessee or any officer, employee or counsel thereof shall make any representation of fact, estimate, opinion, or other statement which, in the opinion of the Internal Revenue Service, proves to be fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable, or insufficient in whole or in part; or Lessee or any officer, employee or counsel thereof shall fail to state any material fact in connection with this Lease or any documents related hereto;

then, if any such foregoing event or some other event caused by the act or failure to act by the Lessee shall cause or contribute to such disallowance, recapture, or loss, Lessee agrees to pay Lessor the following amounts:

(1) a sum which, after deduction of all Federal income taxes required to be paid by Lessor in respect of the receipt thereof, shall be equal to the net present value (based upon a discount rate of 13% per annum) of such depreciation benefits so lost or disallowed or which may not be claimed, net of any additional benefits which may be allowed or claimed for the years in question or any other years by Lessor;

(2) the reasonable costs (including without limitation, court costs and reasonable attorneys' fees) and expenses of the Lessor in connection with the payment or defense against an action for non-payment, of the amounts corresponding to the depreciation benefits lost, disallowed, recaptured or which may not be claimed; and

(3) the amount of all interest and penalties which may be assessed by the United States Government, and all other political entities, against Lessor in connection with such loss, disallowance or recapture.

The foregoing amounts shall be payable in cash within thirty (30) days after Lessor makes written demand therefor. Concurrently with such written demand, the Lessor shall provide the Lessee with an opinion of counsel (which may be Lessor's in-house tax counsel) stating in reasonable detail the factual circumstances giving rise to the Lessor's claim for such indemnity, setting forth those sections and regulations of the Code applicable to such claim and stating such counsel's opinion to the effect that based on those facts, sections and regulations, such claim is properly brought under this Section 22. This provision shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease.

(b) To the extent the Cars qualify and to the extent permitted by the Internal Revenue Code and applicable regulations, Lessor will pass on and permit the Lessee to utilize the Investment Tax Credit and Lessor will perform all acts reasonably necessary to insure that Lessee may take advantage of said Investment Tax Credit.

Upon receipt by Lessor and/or Lessee of any notice from the Internal Revenue Service of disallowance or proposed disallowance of any such depreciation deduction, credits or other benefits on any Car, Lessor or Lessee, as the case may be, shall give the other prompt notice thereof and shall keep the other informed as to the status and progress of any proceedings in connection therewith.

23. Conditions Precedent to Lessor's Obligations. The obligations of Lessor to acquire the Cars from Seller and to lease the Cars to Lessee are subject, at the time of payment for the Cars by Lessor in accordance with the provisions of Section 1 of this Agreement (the "Payment Date"), to the satisfaction of the following conditions:

(a) There shall exist no condition, event or act which would constitute an Event of Default and no condition, event or act which with the giving of notice or lapse of time, or both, would constitute such an Event of Default.

(b) All representations and warranties by Lessee contained herein or otherwise made in writing in connection herewith shall be true and correct with the same effect as though the representations and warranties had been made on and as of the date of such payment.

(c) All legal proceedings and all documents (including legal opinions) in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to Lessor, and Lessor shall have received all information and copies of all documents, including records of corporate proceedings, which Lessor may reasonably have requested in connection therewith, such documents where appropriate to be certified by proper corporate or governmental authorities.

(d) The applicable law, rules or regulations of any public body or authority shall not: (i) prohibit Lessor from acquiring such Equipment and/or leasing same to Lessee; or (ii) after the date hereof, be changed so as to impose doing business restrictions or other requirements upon Lessor which Lessor shall have determined to be too burdensome.

(e) This Agreement and the Other Agreements shall have been duly filed, recorded and/or registered in each jurisdiction where permitted or as may be required by law to establish, perfect, protest and preserve the rights, titles, interests, remedies, powers and privileges of Lessor hereunder and thereunder.

(f) There shall have been duly delivered to Lessor by Lessee evidence satisfactory to Lessor as to the due compliance with the provisions of section 12 of this Agreement.

24. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

25. Other Obligations. Lessee agrees that, during the term of this Agreement, Lessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of

the acquisition of equipment, if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Agreement.

26. Additional Information. In addition to the information called for by section 19 hereof, Lessee will furnish to Lessor such other information, including but not limited to information with respect to Lessee's financial position and business and with respect to the Cars, at such times and for such period or periods as Lessor may from time to time reasonably request.

27. Right of First Refusal. In the event Lessee has not exercised its first renewal option and the Lessor desires to sell the Cars after the expiration of the initial lease term, Lessee shall thereafter have the right, within a period of nine (9) months immediately following said expiration to purchase the Cars at the price and on the terms offered by any third party making a bona fide offer to purchase.

28. Conversion Option. If Lessee shall be in compliance with this Agreement and to the extent that the Lessee's exercise of the conversion option shall fully comply with all existing federal, state and local laws and regulation and will create in Lessor in accordance with 49 U.S.C. §11303 an interest in the Cars not subject to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee or any other party and Lessee supplies Lessor with an opinion of counsel to that effect, such counsel to be reasonably satisfactory to Lessor, at any time after the seventh year of this Lease, Lessee has the option, upon 180 days prior written notice, to terminate

this Lease effective on any rent payment date by agreeing to purchase the equipment for the higher of the applicable termination value as set forth in the termination value schedule, Exhibit D, attached hereto, or the then fair market value of the equipment. Following said notification, the Lessor will enter into a Conditional Sale Agreement in the form of Exhibit E attached hereto or as may be modified so as to comply with all existing laws, rules and regulations, such modification to be in a form satisfactory to Lessor's counsel, which Conditional Sale Agreement will commit Lessee to the payment of the fair market value or termination value, as applicable, over a term equivalent to the remaining initial lease term at a rate equal to two and one-half (2-1/2) percentage points per annum above the prime rate of Morgan Guaranty Trust Company of New York, at the time of the effective date of such termination and conversion. Prime rate means, as of any given date, the prime interest rate per annum for new 90-day loans to commercial borrowers of substantial size and high credit standing as in effect on that date for such loans made by Morgan Guaranty Trust Company of New York at its principal office in New York, New York. The amount of the principal and interest thus determined shall be amortized over the term of the Conditional Sale Agreement thereby providing for equal quarterly installments of principal and interest.

When and as necessary, the fair market value shall be an amount mutually agreed upon by Lessor and Lessee. Lessee shall tender to Lessor its estimate of the fair market value along with the 180-day notice set forth above. In the event Lessor rejects Lessee's estimate and the parties cannot otherwise agree within 60 days after mailing of Lessee's notice to exercise its option hereunder, then the fair market value shall be determined by an appraiser selected by mutual agreement. If the parties

are unable to agree upon an appraiser, or if the fair market value is not determined within 90 days after mailing of Lessee's notice to exercise its option hereunder, Lessor and Lessee shall each select an appraiser within 5 days thereafter and the two appraisers so selected shall select a third appraiser within 10 days after the selection of the two appraisers. The three appraisers shall determine, by the agreement of any two appraisers, the fair market value within 30 days after appointment of the third appraiser. If the three appraisers fail to make such determination within said 30-day period, the fair market value shall be the average of the two appraisals that are closest to each other, or the average of the two higher appraisals if the middle appraisal is equidistant from the other two appraisals. All costs of appraisal shall be borne by Lessee.

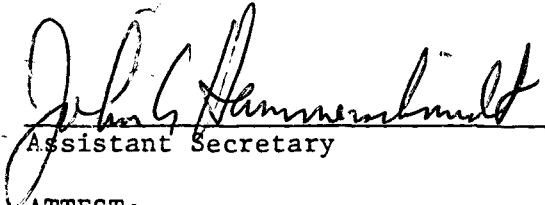
29. Miscellaneous. Any other provision contained in this Agreement to the contrary notwithstanding, it is hereby agreed that, unless clearly inappropriate by its terms, the termination of the leasing of the Cars under the terms of the lease embodied in this Agreement, shall not cut off or otherwise in any way adversely affect any accrued rights of either party hereunder.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereof and their respective successors and assigns.

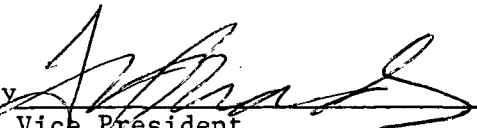
The parties hereto agree that, in connection with the performance of all acts and duties required hereunder, time is of the essence of this Agreement.

IN WITNESS WHEREOF, INTENDING TO BE LEGALLY BOUND HEREBY, Lessor and Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names and their respective seals to be hereunto affixed as of the date first above written.

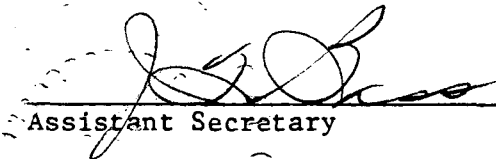
ATTEST:


Assistant Secretary

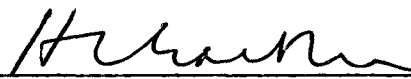
U. S. STEEL CREDIT CORPORATION

By 
Vice President

ATTEST:


Assistant Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

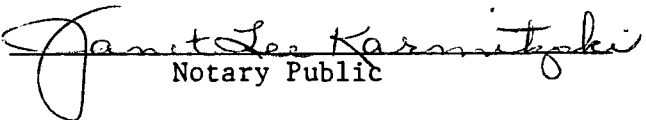
By 
President

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ALLEGHENY

)
) ss.
)

On this 21st day of NOVEMBER, 1979, before me personally appeared
J. L. BRADY and JOHN A. HAMMERSCHMIDT, to me personally known, who,
being by me duly sworn, say that they are the ^{VICE} President and Assistant Secretary,
respectively, of U. S. STEEL CREDIT CORPORATION, that the seal affixed to
the foregoing instrument is the corporate seal of said corporation, that said
instrument was signed and sealed on behalf of said corporation by authority
of its Board of Directors and they acknowledged that the execution of the
foregoing instrument was the free act and deed of said corporation.


Notary Public

My Commission Expires:

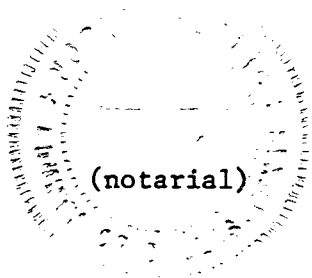
JANET LEE KARMITZSKI, Notary Public
PITTSBURGH, ALLEGHENY COUNTY
COMMONWEALTH OF PENNSYLVANIA
My Commission Expires September 8, 1980

(notarial)

STATE OF TEXAS
COUNTY OF DALLAS

)
) ss.
)

On this 8th day of November, 1979, before me personally appeared H. L. Gastler, to me personally known, who, being by me duly sworn says that he is the ~~Vice~~ President of Missouri-Kansas-Texas Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



Ruth Murodsk
Notary Public
My Commission Expires: 12-31-80

EXHIBIT A

Schedule A dated _____, 1979, to Agreement to Lease Railroad Equipment dated as of July 2, 1979, by and between U. S. Steel Credit Corporation ("Lessor") and Missouri-Kansas-Texas Railroad Company ("Lessee")

TYPE AND DESCRIPTION OF CAR:

Pullman Standard PS-2-CD 100-Ton Jumbo Covered Hopper Cars

NUMBER OF CARS:

One Hundred (100)

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

REPORTING MARKS AND NUMBERS:

MKT 4200-4299

SPECIFICATIONS DESIGNATED BY LESSEE:

As shown in specification 3782 last revised May 11, 1978

INITIAL F.O.T. DELIVERY POINT:

MAXIMUM ACQUISITION COST:

\$41,100 per car

SCHEDULED DELIVERY:

December, 1979

EXHIBIT "B"

CERTIFICATE OF ACCEPTANCE

Under Lease of Railroad Equipment dated as of _____, 1979

The undersigned, being the duly authorized representative of the Missouri-Kansas-Texas Railroad Company ("Lessee"), hereby certifies that the following railroad hopper cars referred to in the Lease of Railroad Equipment ("Lease") between U. S. Steel Credit Corporation and Lessee, dated as of _____, 1979

Missouri-Kansas-Texas
Railroad Company's

Quantity	Identifying Numbers	Date
----------	------------------------	------

have been duly delivered in good order by Pullman Standard to the Lessee, acting on behalf of the Lessor, under the Lease and have been duly inspected and accepted by the undersigned on the said date on behalf of the Lessee as conforming in all respects to the requirements and provisions of the Lease.

The undersigned further certifies that at the time of its delivery to the Lessee each car covered by this Certificate was properly marked on each side thereof with the legend provided in Section 5 of the Lease.

Authorized Representative of
Missouri-Kansas-Texas Railroad Company

EXHIBIT C

SCHEDULE OF STIPULATED LOSS VALUES

Page 1 of 2

Re
 AGREEMENT TO LEASE RAILROAD EQUIPMENT
 DATED AS OF JULY 2, 1979
 BETWEEN
 U. S. STEEL CREDIT CORPORATION
 AS LESSOR
 AND
 MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
 AS LESSEE

The Stipulated Loss Value shall be the sum of (i) any past due rent payments, including interest applicable thereto, (ii) the product in dollars of the cost of the Car or Cars with respect to which Stipulated Loss Value is payable under the lease and the percentage set forth below which is appropriate to the number of rent payments lessee has actually paid to lessor, (iii) all taxes, fees and charges payable as a result of or in connection with payment of the foregoing amount, (iv) all unpaid rent accrued from the last payment date to the due date of the Stipulated Loss Value, and (v) interest on the Stipulated Loss Value from its due date to date of actual payment at 13% per annum.

<u>Due on Payment Date of Rent Payment No.</u>	<u>Stipulated Loss Value Percentages</u>
1	102.94%
2	103.32
3	103.65
4	103.92
5	104.14
6	104.30
7	104.42
8	104.48
9	104.50
10	104.46
11	104.38
12	104.24
13	104.06
14	103.83
15	103.55
16	103.22
17	102.84
18	102.42
19	101.95
20	101.43
21	100.87
22	100.26
23	99.61
24	98.91
25	98.17
26	97.38
27	96.55
28	95.68
29	94.77
30	93.80
31	92.81
32	91.77
33	90.69
34	89.56
35	88.40
36	87.20
37	85.97
R	

EXHIBIT C

SCHEDULE OF STIPULATED LOSS VALUES

Page 2 of 2

Re
AGREEMENT TO LEASE RAILROAD EQUIPMENT
DATED AS OF JULY 2, 1979
BETWEEN
U. S. STEEL CREDIT CORPORATION
AS LESSOR
AND
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
AS LESSEE

<u>Due on Payment Date of Rent Payment No.</u>	<u>Stipulated Loss Value Percentages</u>
39	83.37%
40	82.02
41	80.63
42	79.20
43	77.74
44	76.25
45	74.72
46	73.15
47	71.56
48	69.94
49	68.28
50	66.57
51	64.85
52	63.10
53	61.31
54	59.48
55	57.62
56	55.73
57	53.81
58	51.83
59	49.83
60	47.79
61	45.71
62	43.58
63	41.43
64	39.23
65	36.99
66	34.70
67	32.37
68	30.00
69	27.59
70	25.17
71	22.82
72	20.00

EXHIBIT D

SCHEDULE OF TERMINATION VALUES

Page 1 of 2

Re
 AGREEMENT TO LEASE RAILROAD EQUIPMENT
 DATED AS OF JULY 2, 1979
 BETWEEN
 U. S. STEEL CREDIT CORPORATION
 AS LESSOR
 AND
 MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
 AS LESSEE

The Termination Value shall be the sum of (i) any past due rent payments, including interest applicable thereto, (ii) the product in dollars of the cost of the Car or Cars with respect to which Termination Value is payable under the lease and the percentage set forth below which is appropriate to the number of rent payments lessee has actually paid to lessor, (iii) all taxes, fees and charges payable as a result of or in connection with payment of the foregoing amount, (iv) all unpaid rent accrued from the last payment date to the due date of the Termination Value, and (v) interest on the Termination Value from its due date to date of actual payment at 13% per annum.

<u>Due on Payment Date of Rent Payment No.</u>	<u>Termination Value Percentages</u>
29	94.77%
30	93.80
31	92.81
32	91.77
33	90.69
34	89.56
35	88.40
36	87.20
37	85.97
38	84.68
39	83.37
40	82.02
41	80.63
42	79.20
43	77.74
44	76.25
45	74.72
46	73.15
47	71.56
48	69.94
49	68.28
50	66.57
51	64.85
52	63.10
53	61.31
54	59.48
55	57.62
56	55.73
57	53.81
58	51.83
59	49.83
60	47.79
61	45.71
62	43.58

EXHIBIT D

SCHEDULE OF TERMINATION VALUES

Page 2 of 2

Re
AGREEMENT TO LEASE RAILROAD EQUIPMENT
DATED AS OF JULY 2, 1979
BETWEEN
U. S. STEEL CREDIT CORPORATION
AS LESSOR
AND
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
AS LESSEE

Due on Payment Date
of Rent Payment No.

Termination
Value Percentages

63	41.43%
64	39.23
65	36.99
66	34.70
67	32.37
68	30.00
69	27.59
70	25.17
71	22.82
72	20.00

EXHIBIT E

Recorded with the Interstate
Commerce Commission on

_____ a.m. and assigned
Recordation No. _____.

CONDITIONAL SALE AGREEMENT

Dated as of

Between

U. S. STEEL CREDIT CORPORATION,

Seller,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,

Railroad.

Re:

\$ _____ Maximum Principal Amount
Conditional Sale Indebtedness due _____

of

Missouri-Kansas-Texas Railroad Company

EXHIBIT E

(To Agreement to Lease Railroad Equipment)

CONDITIONAL SALE AGREEMENT dated as of _____,
_____, between U. S. STEEL CREDIT CORPORATION
(hereinafter called the "Seller") and MISSOURI-
KANSAS-TEXAS RAILROAD COMPANY (hereinafter
called the "Railroad")

WHEREAS, the Seller has agreed to sell to the Railroad,
and the Railroad has agreed to purchase certain railroad equip-
ment described in Schedule A hereto (hereinafter collectively
called the "Cars" and each a "Car");

NOW, THEREFORE, in consideration of the mutual promises,
covenants and agreements hereinafter set forth, the parties,
intending to be legally bound, do hereby agree as follows:

ARTICLE 1. Sale. Pursuant to this Conditional Sale
Agreement (hereinafter "Agreement") the Seller shall sell to the
Railroad and the Railroad will purchase from the Seller and pay
for (as hereinafter provided) the Cars described in Schedule A
hereto.

ARTICLE 2. Prior Use of Cars, Sold "As Is". Railroad
herein represents and warrants that it has been leasing the Cars
from Seller pursuant to an Agreement to Lease Railroad Equipment
dated as of July 2, 1979 (hereinafter called the
"Lease"), that the Cars were built in accordance with Railroad's
Purchase Order D-24432 dated July 31, 1978 and as modified by
it, that under the Lease the Railroad agreed that Seller as Lessor

had no responsibility or liability to Railroad as Lessee or any other person for the adequacy or accuracy of any specifications set forth in its purchase order or for the failure on the part of the manufacturer of the Cars to accept the purchase order or to make delivery of any Car covered thereby in accordance with the terms thereof; that Railroad as Lessee had the sole responsibility to accept the Cars from the manufacturer of the Cars and has accepted the Cars and now has all of the Cars in its possession and executed Certificates of Acceptance and delivered them to Seller as Lessor; that by the delivery of any Car to the Railroad as Lessee and the delivery of a Certificate of Acceptance to Seller as Lessor constituted Railroad's (as Lessee) acknowledgement that Railroad as Lessee had fully inspected such Cars; that such Cars were and are in good condition and repair and were and are of the manufacture, design and specifications selected by Railroad as Lessee and were and are suitable for Railroad's (as Lessee) purposes; that such Cars were and are in full compliance with the Lease and the Interstate Commerce Commission and all other applicable governmental agency requirements and specifications, and Railroad had accepted such Cars, and Seller as Lessor had made no representations or warranty of any kind with respect to such Cars; that during the terms of the Lease Railroad as Lessee has materially complied with all governmental laws, regulations, requirements and rules foreign or domestic (including the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules,

or supplements thereto of the Mechanical Division, Association of American Railroads) with respect to the use, maintenance and operation of each Car and in the case of any equipment or appliance for a Car required to be changed or replaced, or in case any additional or other equipment or appliance required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, the Railroad as Lessee has made such changes, additions and replacements at its own expense, and has prepared and, to the extent permissible, filed on behalf of Seller as Lessor any and all reports (other than income tax returns) to be filed by Seller as Lessor with any federal, state or other regulatory authority by reason of Seller's (as Lessor) ownership of the Cars or the leasing thereof to Railroad as Lessee; that the Railroad as Lessee has used the Cars only in the manner for which they were designed and intended and, at its own cost and expense, maintained and kept the Cars in good order, condition and repair, and suitable for use in interchange; that any parts installed or replacements made by Railroad as Lessee upon any Car was an accession to such Car and title thereto immediately vested in the Seller as Lessor, without cost or expense to Seller as Lessor.

Railroad warrants and represents that all of the Cars are in existence, in the same condition as originally received except for normal wear and tear, and that it has complied with the terms of the Lease and agrees that the sale of the Cars is on an "as is" basis. Immediately following execution hereof,

Railroad will use its best efforts to determine the location of all of the Cars and shall, for and on behalf of Seller, arrange and provide for the transportation of said Cars to locations designated by Railroad for delivery and acceptance by Railroad and shall, at Railroad's own cost and expense, make any and all necessary arrangements to accomplish the delivery to it of the Cars.

RAILROAD ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO CONDITION, QUALITY, DURABILITY, SUITABILITY, ADEQUACY, MERCHANTABILITY, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, DESIGN, OPERATION, USE OR PERFORMANCE OF ANY CAR OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY CAR, except that Seller represents that it has such title and ownership in the Cars as has been conveyed to Seller as Lessor in bills of sale relating to the Cars as referred to in provision 8(a) of the Lease.

ARTICLE 3. Purchase Price and Payment. The price of the Cars is set forth in Schedule B hereto.

The Railroad hereby acknowledges itself to be indebted to the Seller in the amount of, and hereby promises to pay in cash to the Seller at such place as the Seller may designate, the purchase price of \$_____ in ____ consecutive equal quarterly installments of \$_____ each, commencing on _____, which include interest on the unpaid portion of the purchase price at the rate of ____% per annum.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 1% per annum higher than specified above upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

In the event the Seller assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request, upon proof of proper assignment, the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 4. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of

title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Cars delivered to it or in the use or operation thereof or upon the earnings arising therefrom or upon the Seller solely by reason of its ownership thereof and will keep at all times all and every part of the Cars free and clear of all impositions which might in any way affect the title of the Seller or result in a lien upon any part of the Cars; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Seller adversely affect the property or rights of the Seller in or to the Cars or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Seller directly and paid by the Seller, the Railroad shall reimburse the Seller upon presentation of an invoice therefor, and any amounts so paid by the Seller shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Seller for any impositions so paid unless the Seller shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Seller) or unless the Railroad shall have approved the payment thereof.

ARTICLE 5. Title to the Cars. The Seller shall and hereby does retain the full legal title to and in the Cars until

the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Cars to and the possession and use thereof by the Railroad prior to and as provided in this Agreement. Any and all additions to the Cars that are not readily removable without damage to the Cars and any and all replacements of the Cars and of parts thereof and additions thereto shall constitute accessions to the Cars and shall be subject to all the terms and conditions of this Agreement and included in the term "Cars" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the full indebtedness in respect of the purchase price of the Cars, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Cars shall pass to and vest in the Railroad without further transfer or action on the part of the Seller. However, the Seller, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Cars transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or

instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Cars. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 6. Marking of the Cars. The Railroad will cause each Car to be kept numbered with its identifying number as set forth in Schedule B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Car, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act", or other appropriate markings approved by the Seller, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Seller's title to and property in the Cars and its rights under this Agreement. The Railroad will not place any Car in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed,

defaced or destroyed. The Railroad will not change the number of any Car except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Seller by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any Car as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Cars to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 7. Casualty Occurrences. In the event that any Car shall be worn out, lost, stolen, destroyed irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Seller in regard thereto. When the aggregate Casualty Value (as defined herein) of all Cars having suffered a Casualty Occurrence (exclusive of Cars having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Seller pursuant to this Article 7) hereunder shall exceed \$100,000 (or such lesser amount as the Railroad may elect), the

Railroad, within 30 days after the Railroad has knowledge of such event, shall file with the Seller a certificate of an officer of the Railroad setting forth the Casualty Value of each Car having suffered a Casualty Occurrence and shall promptly pay to the Seller a sum equal to the Casualty Value as of the date of such payment of each Car having suffered a Casualty Occurrence. In case any money is applied pursuant to this Article 7 to prepay indebtedness, it shall be so applied to reduce each installment of conditional sale indebtedness thereafter falling due pro rata.

The Casualty Value of each Car shall be deemed to be that amount which bears the same ratio to the original purchase price thereof of that Car as the unpaid conditional sale indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 7) as of the date payment is made with respect to such Casualty Occurrence bears to the original conditional sale indebtedness.

In order to facilitate the sale or other disposition of any Car suffering a Casualty Occurrence, the Seller shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Car, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee a bill of sale (without warranties) for such Car, and such other documents as may be required to release such Car from the

terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 8. Insurance. Railroad will, at all times prior to the payment of the full indebtedness in respect of the purchase price of the Cars, together with interest thereon and all other payments required thereby, at its own expense, cause to be carried and maintained public liability and casualty insurance in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by Railroad on equipment owned by it, provided that the casualty insurance shall name Seller as Loss Payee as its interest may appear and shall not be less than the unpaid portion of the purchase price owed by Railroad to Seller and the public liability insurance shall be in amounts not less than \$25,000,000. Such insurance shall be in form and amount and with Lloyds of London and/or insurers reasonably acceptable to Seller and shall include Railroad and Seller as named insureds as their interests may appear, and may have a \$1,000,000 per accident deductible for liability insurance and \$1,000,000 per accident deductible for casualty insurance. Railroad shall deliver said policies, or duplicates thereof, to Seller upon Seller's written request therefor. Each insurer shall acknowledge and agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Seller that it will make payment of any

claims in respect of the Cars jointly to Railroad and Seller for application in accordance with the terms of this Agreement and give Seller at least thirty (30) days written notice before the policy in question shall be altered or cancelled. The proceeds of such insurance, at the option of Seller, shall be applied toward (a) the replacement, restoration or repair of the Cars, (b) payment of the Casualty Value thereof or (c) payment or as provision for satisfaction of any other obligations of Railroad hereunder.

ARTICLE 9. Maintenance; Compliance with Laws and Rules.

The Railroad will at all times maintain the Cars or cause the Cars to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Cars may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Cars, to the extent that such laws and rules affect the title, operation or use of the Cars, and in the event that such laws or rules require any alteration, replacement or addition of any part on any Car, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not,

in the opinion of the Seller, adversely affect the property or rights of the Seller under this Agreement.

ARTICLE 10. Reports and Inspections. On or before May 15 in each year, commencing with May 1, _____, the Railroad shall furnish to the Seller an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of each and every Car that has suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) or any substantial modification, and such other information regarding the condition and state of repair of each Car as the Seller may reasonably request and (b) stating that, in the case of each Car repaired, modified or repainted during the period covered by such statement, the numbers and markings required by Article 6 hereof have been preserved or replaced. The Seller shall have the right, by its agents, to inspect each and every Car and the Railroad's records with respect thereto at such reasonable times as the Seller may request during the term of this Agreement, subject to reasonable supervision by Railroad.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Cars and the use thereof upon the lines of Railroad owned or operated by it either alone or jointly with others and whether

under lease or otherwise, or upon the lines of Railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, except that the Railroad will not assign or knowingly permit the assignment of any Cars for service outside the United States. Railroad shall not knowingly allow the Cars to be used continuously in unit train service.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Cars, or any of them, equal or superior to the Seller's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Cars or otherwise under this Agreement. Any amounts paid by the Seller in discharge of liens, charges or security interests upon the Cars shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Seller for any amounts so paid by the Seller unless the Railroad shall have

approved the payment thereof or the Seller shall have received an opinion of counsel that such claim would constitute a lien, charge or security interest on or in the Cars equal or superior to the Seller's interest therein adversely affecting the property or rights of the Seller in or to the Cars.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad Indemnities. Railroad agrees to indemnify, defend and hold harmless Seller and its successors and assigns from and against (a) any and all loss or damage of or to the Cars, usual wear and tear excepted, and (b) any and all losses, expenses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, patent liabilities, penalties and interest, arising in any way out of or as the result of the entering into or the performance of this Agreement, the ownership of any Car, the transportation, leasing, use, operation, condition, purchase, rehabilitating, delivery, rejection or storage of any Car or any accident in connection with the transportation, leasing, operation, use, condition, possession, or storage of any Car resulting in damage to property or injury or death to any person, or arising by reason or as a result of any act or omission of the Seller or of the Railroad for itself or as agent or attorney-in-fact

for Seller hereunder; including any and all claims based upon the alleged negligence of Seller. The indemnities arising hereunder shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the termination of this Agreement.

ARTICLE 14 Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Cars without first obtaining the written consent of the Seller.

All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Railroad may be assigned by the Seller and reassigned by any assignee at any time or from time to time.

Upon any such assignment either the assignor or the assignee shall give written notice along with proof of assignment to the Railroad, together with a counterpart or copy of such assignment, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Cars and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the purchase price of the Cars or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or to make provision satisfactory to the Seller for such compliance; or

(c) a petition for reorganization under Section 77 (Subchapter IV of the Bankruptcy Code after October 1, 1979) of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that

such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Car;

then at any time after the occurrence of such an event of default the Seller may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Seller, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the purchase price of the Cars, together with the interest thereon then accrued and unpaid and premium, if any, thereon, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the purchase price of the Cars so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Seller of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Seller may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Seller may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Seller, take or cause to be taken by its agent or agents immediate possession of the Cars or one or more thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Cars may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Seller shall demand possession of the Cars pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Cars to the Seller, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Car has been interchanged to return the Cars so interchanged), cause (a) the Cars to be moved to such point or points on its lines as shall be designated by the Seller and shall there deliver the Cars or cause them to be delivered to the Seller and (b) the Cars to be moved to such interchange point or points of the Railroad as shall be designated by the Seller upon any sale, lease or other disposal of all or any of the Cars by the Seller. At the option of the Seller, the Seller may, for a period not to exceed six months, keep the Cars on any of the lines or premises of the Railroad, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Seller reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Cars by the Seller, the Seller's representatives and prospective purchasers and users; provided, however, that the Railroad shall not be liable

in connection with such inspection, except in the case of negligence of the Railroad or any of its employees or agents, for any injury to or death of any person exercising inspection rights under this paragraph. This agreement to deliver the Cars and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Seller and its agent or agents for damages of whatever nature in connection with any retaking of any Car in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Seller (after retaking possession of the Cars as hereinbefore in this Article 16 provided) may at its election and upon such notice as is hereinafter set forth retain the Cars in satisfaction of the entire indebtedness in respect of the purchase price of the Cars and make such disposition thereof as the Seller shall deem fit. Written notice of the Seller's election to retain the Cars shall be given to the Railroad by telegram or registered mail, addresses as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Seller should elect to retain the Cars and no objection is made thereto within the 30-day period described in the second proviso below,

all the Railroad's rights in the Cars shall thereupon terminate and all payments made by the Railroad may be retained by the Seller as compensation for the use of the Cars by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the purchase price of the Cars, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing and storing the Cars and the Seller's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Cars shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Seller within 30 days from the receipt of notice of the Seller's election to retain the Cars, then the Seller may not so retain the Cars, but shall sell, lease or otherwise dispose of them or continue to lease or continue to hold them pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Seller shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Cars in any other manner, it shall be deemed to have elected to sell the Cars in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Seller, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Cars, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Seller may determine; provided, however, that if, prior to such sale, and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the purchase price of the Cars, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing, storing, holding and preparing the Cars for, and otherwise arranging for, the sale and the Seller's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Cars shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Seller in retaking possession of, removing, storing, holding, preparing for sale and selling the Cars, shall be credited on the amount due to the Seller under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine. The Seller or the Railroad may bid for and become the purchaser of the Cars, or any Car so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Seller shall be the purchaser of the Cars, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Seller shall be entitled to have credited on account thereof all or any part of the sums due to the Seller from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to

the Seller the per diem interchange for each unit of Cars which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Seller shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Seller's rights or the Railroad's obligations hereunder. The Seller's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Seller's rights hereunder with respect to any subsequent payments or defaults in payments. The Seller and the Railroad agree that the Seller shall be entitled to all rights provided

for in §77(j) [11 U.S.C. §1168 after October 1, 1979] of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Seller shall have the right to take possession of the Cars upon an event of default under this Agreement regardless of whether or not the Railroad is in reorganization.

If, after applying all sums of money realized by the Seller under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Seller upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 3 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Seller may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Seller in enforcing its remedies under the terms of this Agreement. In the event that the Seller shall bring any suit to enforce any of its rights hereunder and

shall be entitled to judgment, then in such suit the Seller may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Cars, or any Car and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Seller's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 of the Interstate Commerce Act. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Seller for the purposes specified in the immediately preceding sentence of this Article 18. The Railroad will promptly furnish to the Seller certificates or other evidence satisfactory to the Seller of such filing, registering, depositing and recording. The Railroad will furnish to the Seller from time to time an opinion of counsel for the Railroad satisfactory to Seller to the effect that all necessary filings and recordings have been made to protect the interests of the Seller in and to the Cars.

ARTICLE 19. Partial Invalidity. The unenforceability or invalidity of any article or articles of this Agreement shall not render any other article or articles herein contained unenforceable or invalid.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for Seller) incident to this Agreement.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad at 701 Commerce Street, Dallas, Texas 75202.

(b) to the Seller, at 600 Grant Street, Room 5688, Pittsburgh, Pennsylvania 15230.

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Seller and the Railroad with respect to the Cars and supersedes all other agreements, oral or written, with respect to the Cars, except as is set forth in the Lease. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Seller and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 of the Interstate Commerce Act and